



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

December 17, 2002

Mr. Edward M. Sosa
Chief Legal Officer
El Paso County Hospital District Legal Unit
4815 Alameda
8th Floor, Suite B
El Paso, Texas 79905

OR2002-7227

Dear Mr. Sosa:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 173803.

R.E. Thomason General Hospital ("Thomason"), which is owned and operated by the El Paso County Hospital District, received a request for a copy of a specified audit report. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.022 of the Government Code makes certain information expressly public, and therefore not subject to discretionary exceptions to disclosure. Section 552.022 states in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and are not excepted from required disclosure under this chapter unless they are expressly confidential under other law.

Gov't Code § 552.022. One such category of expressly public information under section 552.022 is "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by [s]ection 552.108." Gov't Code § 552.022(a)(1). We find that the information submitted as Exhibit C constitutes a completed report "made of, for, or by" Thomason. Therefore, the submitted report must be released to the requestor unless it is confidential under other law. *See id.* You argue that the responsive information is excepted from disclosure under section 552.107 of the Government

Code. However, section 552.107 is a discretionary exception and not "other law" for the purposes of section 552.022. See Open Records Decision No. 630 at 4-5 (1994) (governmental body may waive statutory predecessor to section 552.107). However, the attorney-client privilege is also found in Rule 503 of the Texas Rules of Evidence. Recently, the Texas Supreme Court held that "[t]he Texas Rules of Civil Procedure and Texas Rules of Evidence are 'other law' within the meaning of section 552.022." *In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). Additionally, because you claim that the submitted report is confidential under section 552.101 of the Government Code, we will address your arguments under that exception.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 161.032 of the Health and Safety Code provides in part:

(a) The records and proceedings of a medical committee are confidential and are not subject to court subpoena. ... Records, information, or reports of a medical committee ... and records, information, or reports provided by a medical committee ... to the governing body of a public hospital ... are not subject to disclosure under Chapter 552, Government Code.

....

(c) This section . . . do[es] not apply to records made or maintained in the regular course of business by a hospital

Health & Safety Code § 161.032(a), (c). For purposes of this confidentiality provision, a "'medical committee' includes any committee, including a joint committee, of . . . a hospital[or] a medical organization" Health & Safety Code § 161.031(a). The term "medical committee" also includes "a committee, including a joint committee, of one or more of the entities listed in Subsection (a)." *Id.* § 161.031(c). Section 161.0315 provides in relevant part that "[t]he governing body of a hospital [or] medical organization . . . may form . . . a medical committee, as defined by section 161.031, to evaluate medical and health care services" Health & Safety Code § 161.0315(a).

You state that Thomason "has implemented a Compliance Program to ensure compliance with all applicable laws and regulatory requirements" and that "as part of the Compliance Program all employees of Thomason are encouraged to report illegalities or violations of regulations or policies to the Compliance Office." You further state that the report at issue "has been provided only to members of the Board Compliance Committee and administrative staff directly involved with reviewing and validating the data and conclusions contained in the report." Based on your arguments, we find that the committee is a medical committee for purposes of subchapter D of chapter 161 of the Health and Safety Code. See Health & Safety Code § 161.031(c). Therefore, the submitted report is confidential under section

161.032 of the Health and Safety Code and must be withheld under section 552.101 of the Government Code. *See Jordan v. Court of Appeals*, 701 S.W.2d 644, 648 (Tex. 1985) (court found privilege extends to minutes of committee meetings, correspondence between members relating to deliberation process, and any final committee product). As we are able to make this determination, we need not address your remaining argument under Rule 503 of the Texas Rules of Evidence.

Additionally, you request that this office issue a previous determination regarding the minutes, records, and reports of Thomason's Compliance Committee. We decline to issue such a previous determination at this time.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/lmt

Ref: ID# 173803

Enc: Submitted documents

c: Mr. David Crowder
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